In the Punjab and Haryana High Court, Chandigarh.

CR No.2377 of 2007

Date of decision:15.10.2007.

State of Punjab and another ... Petitioner

Versus

Mukhtiar Singh ... Respondent

Present: Ms.Monica Chibbar Sharma, A.A.G., Punjab
for the petitioners.

Mr.Sukhpal Singh, Advocate, for the respondent.

PERMOD KOHLI, J. (Oral):

Legality and propriety of the orders dated 11.11.2006 and 31.1.2007 passed by the learned Civil Judge (Senior Division), Jagraon, are under question.

It is admitted case of the parties that a decree for declaration with consequential relief of permanent injunction was passed in Civil Suit No.141 instituted on 09.05.2001,wherein the following relief was granted:-

> "In view of the un-rebutted and unchallenged evidence on record of the plaintiff, I am of the considered view that plaintiff has successfully proved his case on file and the impugned orders dated 1.6.99

and subsequent order No.3/17/98-1 dated 22.3.2001 are illegal, null and void and as such both these orders are ordered to be set aside. Suit of the plaintiff for declaration is hereby decreed with costs. Decree sheet be prepared and the file be consigned to the record room."

It appears that this judgment was not complied with and an execution petition came to be filed by respondent Mukhtiar Singh in the Court of learned Civil Judge (Senior Division), Jagraon for execution of the aforesaid decree. It appears that during the course of execution, the entire amount payable in view of the relief granted, was deposited but the decree holder respondent claimed interest. One Senior Assistant, namely, Jiwan Kumar, who appeared on behalf of the judgment debtor, appears to have made a statement before the executing Court that he may be given three months time for payment of interest after obtaining sanction from the higher officers. On the basis of this statement, the executing Court passed order dated 11.11.2006, imposing a further liability of Rs.60,000/- on account of interest merely on the basis of the statement of Jiwan Kumar, Senior Assistant. This order was followed by an order dated 31.1.2007, whereby the vehicle attached has been ordered to be sold to recover the component of interest.

I have heard the learned counsel for the parties at length.

It is the admitted case of the parties that in the original decree,

here was no direction for payment of interest. The suit was for declaration challenging the validity of an order passed by the respondents-State and the suit having been decreed, the order was quashed/set aside and consequential relief was allowed which, inter-alia, involved payment of certain monetary benefits. The Court passing the decree dated 12.06.2004 did not mention anything about the payment of interest. Obviously, the cause of the suit was not for recovery and there was no question of payment of interest. The executing Court has committed a glaring illegality by imposing a further liability of interest merely on the basis of the statement made by Jiwan Kumar, Senior Assistant, an officer of a junior rank, who appeared on behalf of the judgment debtor. No circumstances are indicated as to how interest becomes payable. A Senior Assistant cannot fasten the State with liability. The order passed by the executing Court is totally illegal and unwarranted.

In view of the above, this revision petition is allowed. Both the orders dated 11.11.2006 and 31.1.2007 are hereby quashed. The appellant-State is also directed to hold an enquiry against Jiwan Kumar, Senior Assistant, who has made a statement before the executing Court and made the appellant-State to suffer such liability. If on enquiry, it is found that he has committed a misconduct, appropriate action be taken against him. No costs.

15.10.2007 (PERMOD KOHLI)
BLS JUDGE

Note: Whether to be referred to the Reporter? NO